

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
CHARLES ESPOSITO,

Plaintiff,

-against-

MEMORANDUM AND ORDER  
12-CV-2337(JS)(WDW)

PATRICK DONOHOE,<sup>1</sup> POSTMASTER GENERAL,

Defendant.

-----X

APPEARANCES:

For Plaintiff: Charles Esposito, Pro Se  
482 Patricia Court  
Oakdale, NY 11769

For Defendant: No appearance

SEYBERT, District Judge:

Presently pending before the Court is the Complaint brought by pro se plaintiff Charles Esposito ("Plaintiff") pursuant to the Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112-12117 ("the ADA")<sup>2</sup> alleging that Patrick Donahoe, Postmaster General, ("Defendant") discriminated against the Plaintiff based on his disability. Plaintiff's Complaint is accompanied by an application to proceed in forma pauperis. Upon

---

<sup>1</sup> The Court takes judicial notice that Plaintiff intended to name Patrick Donahoe, the Postmaster General of the United States Postal Service, and the Clerk of the Court is directed to amend to caption to reflect the proper spelling of Defendant's name.

<sup>2</sup> Plaintiff's Complaint, submitted on the Court's employment discrimination complaint form, reflects that Plaintiff has checked the box for disability discrimination under the ADA. However, given that the Defendant is the United States Postmaster General, Plaintiff's claim arises under the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., and the Court so construes the Complaint.

review of the declaration in support of the application to proceed in forma pauperis, the Court determines that the Plaintiff's financial status qualifies him to commence this action without prepayment of the \$350.00 filing fee. See 28 U.S.C. §§ 1914(a); 1915(a)(1). Therefore, Plaintiff's request to proceed in forma pauperis is GRANTED.

Having reviewed the pro se Complaint, the undersigned declines to conclude at this stage that the within action is frivolous or malicious within the meaning of 28 U.S.C. § 1915. While it may be that Plaintiff is unable to prevail on his claim, the Court's uncertainty does not justify dismissal at this early juncture. McEachin v. McGuinnis, 357 F.3d 197, 200 (2d Cir. 2004). Accordingly, the application to proceed in forma pauperis is GRANTED and the Court orders service of the Complaint without prepayment of the filing fee.

The Clerk of the Court is directed to forward to the United States Marshal for the Eastern District of New York copies of Plaintiff's Summons, Complaint, and this Order for service upon Defendant without prepayment of fees. Furthermore, the Clerk is directed to mail a copy of this Order to the Plaintiff.

SO ORDERED.

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.

Dated: July 6, 2012  
Central Islip, New York